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Dismiss

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~404.~~ 196

ALEXANDER CROSS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 14, 1870.

Dec 1871

SUPREME COURT OF THE UNITED STATES.

No. 404.

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1 In the Court of Claims.

ALEXANDER CROSS
vs.
THE UNITED STATES.

Petition.

To the honorable judges of the Court of Claims:

Your petitioner, Alexander Cross, a citizen of the United Kingdom of Great Britain and Ireland, now residing and doing business in the city of Valparaiso, Chile, respectfully represents: That heretofore, to wit, on the 15th day of November, 1856, he filed in this court, as then constituted, his petition, setting out, among other things, that, on the 28th day of April, 1849, one Daniel Saffarans of the State of Tennessee, (who is now deceased,) entered into an article of agreement with James Collier, then collector of the port of San Francisco, in California, by which the said Saffarans covenanted that he would well and substantially erect, build, and finish a large four-story iron-and-brick storehouse in said city of San Francisco, on a site to be selected by said collector, of dimensions and description specified in said contract, to be finished and ready for occupancy by the 1st of September, 1850; said store, when finished, approved, and accepted by the collector, to be rented to the United States for the term of fifteen years, the rent per annum to be determined and fixed by the collector; that, on the 8th day of May, 1849, said article of agreement, with certain reservations and conditions, was approved by W. M. Meredith, the then Secretary of the Treasury, one of which was that the rate of rent to be fixed by the collector should be subject to the express approval of the Secretary of the Treasury.

That afterwards, to wit, on the day of the said Collier, as collector as aforesaid, did contract with the said Daniel Saffarans to rent said warehouse for a term of fifteen years, at the rate of two thousand dollars per month, which contract was sent to Washington for the approval of the Secretary of the Treasury.

That by virtue of certain arrangements and agreements entered into between the said Daniel Saffarans and your petitioner (who was then the head of a commercial house in Glasgow, Scotland, and of another commercial house in San Francisco, California, where he then
2 resided,) your petitioner undertook that said commercial houses should attend to the carrying out of said Saffarans' said contract, for and in his behalf, and should advance the capital necessary in Europe and California, to the extent of fifty thousand dollars, at a rate of interest, and to be reimbursed in a manner agreed upon.

That in compliance with said arrangement and agreement your petitioner, through said commercial houses, advanced the necessary capital and erected the said building in conformity to the contract of said Saffarans with said collector; but to do this was under the necessity of advancing, instead of fifty thousand, the sum of one hundred thousand dollars, or thereabouts.

That when the building was completed and ready for the occupancy of the Government the then Secretary of the Treasury (Thomas Corwin) disapproved the contract of the said Collier, collector as aforesaid, in respect to the term of said lease and the rate of rent, and induced the said Saffarans to consent to a modification of his said contract, limiting the term for which the Government should be bound to rent said building to ten years; that accordingly, on the 11th of November, 1850,

a supplemental contract was entered into by T. Butler King, the then collector of the port of San Francisco, and said Saffarans, in modification of, and to carry into effect said contract of April 28th, 1849, reducing the term of the lease to ten years, and fixing the rent at fifteen hundred dollars per month, payable monthly by the collector of San Francisco; that said last mentioned contract was entered into by said collector, T. Butler King, at the city of Washington, and was on the same day approved by the Secretary of the Treasury, on the express understanding and condition that the said T. Butler King, on his arrival at San Francisco, should first examine the warehouse and duly accept the same, as being substantially of the character, description, and dimensions required by said article of agreement of April 28th, 1849; that said King, on his arrival at San Francisco, first examined said warehouse and then endorsed on said contract his acceptance of said building, to take effect as of the date of the 14th of January, 1851.

That said contract being thus fully completed, and said Saffarans being wholly unable to reimburse the advances of capital made by your petitioner as aforesaid, your petitioner was driven to the necessity of negotiating with said Saffarans for the purchase of his entire interest in the said warehouse, and to effect this he was compelled to take the building and ground on which it stands at cost, and to give Saffarans a bonus or profit of twenty thousand dollars; that the preliminaries of such purchase being arranged, said Saffarans, by his writing under his hand and seal, of the date of July 10, 1851, executed by him in
3 the State of Tennessee, assigned and conveyed to your petitioner his said articles of agreement with the Government of the United States, with all the rights, rents, and interests, accrued or to accrue, under and in virtue of the same, which said assignment was by said Saffarans transmitted to California to his son, Isaac Saffarans, with an endorsement on it stating it to be held as an escrow, and not to be valid until R. H. Crittenden, A. P. Sheldon, and said Isaac Saffarans should endorse upon it their approval; that along with said assignment said Daniel Saffarans transmitted to California a power of attorney of the same date, (viz, July 10, 1851,) authorizing the said R. H. Crittenden, Isaac Saffarans, and A. P. Sheldon to deliver said assignment to your petitioner, with power of substitution.

That it so happened that said Crittenden and Sheldon had both left the State of California before the arrival there of said assignment; by reason whereof the said R. H. Crittenden, by his power of attorney, dated at New York July 25th, 1851, substituted as his attorney, under said original power, George W. Guthrie, of San Francisco, to act for him in his stead and place; and by virtue of said power of attorney and substitute power, the said R. H. Crittenden, by his attorney, George W. Guthrie, and the said Isaac Saffarans, by and for himself, did, on the 15th of September, 1851, endorse on said assignment of the said Saffarans, their approval thereof:

That afterwards, on the 19th of November, 1851, the said A. P. Sheldon, by his substituted power, authorized Isaac Saffarans, B., of San Francisco, to endorse for him, as his attorney, his approval of said assignment; and on the 6th of January, 1852, the said A. P. Sheldon, by his attorney, (the said Isaac Saffarans, B.,) endorsed on said assignment his approval thereof; whereby said assignment became complete, and took effect as a transfer to your petitioner of the entire interest in said warehouse, together with all the rights, rents, and interests accrued, or to accrue, under and by virtue of said Daniel Saffarans' said contract

with the United States, and that your petitioner had ever since remained the sole proprietor of the same.

That said assignment being thus completed, the said Daniel Saffarans, by his attorney, Isaac Saffarans, B., by a note in writing endorsed on said contract with the Government, addressed to the Hon. T. Butler King, collector of the port of San Francisco, requested that all back and future rents arising under the contract, be paid to your petitioner; that said collector was immediately after said assignment and written request, duly notified thereof, and in conformity thereto accepted and recognized your petitioner as landlord of the Government; and from the 13th of January, 1851, to the 14th of August, 1853, the rent of said warehouse was regularly paid monthly to your petitioner, in pursuance of said contract with the Government.

4 That, on the 12th day of April, 1853, the Secretary of the Treasury, without any valid reason or right so to do, issued instructions to Richard P. Hammond, the then collector of San Francisco, to abandon said warehouse, and to stop the payment of rent thereon; in pursuance of which instructions said Hammond, as collector of said port, on the 4th of August, 1863, addressed a letter to your petitioner, advising him that in pursuance of instructions from the Secretary of the Treasury, he should on the 13th day of that month, abandon the building, and should pay no rent thereon after that date; that your petitioner, on the said 13th day of August, 1853, addressed a letter to said collector, protesting against the right of the Secretary of the Treasury to rescind said contract, and notifying said collector that he should claim payment of rent pursuant thereto, to the end of the term for which the building was leased; that said collector did, on said 13th of August, 1853, abandon said building, and had ever since refused to occupy the same, or pay rent thereon.

And said original petition alleged that, on the 14th of November, 1856, thirty-nine months had elapsed since the payment of any rent on said lease, and that the arrears of rent due to said date amounted to the sum of fifty-eight thousand five hundred dollars, without interest, which ought to be allowed thereon; and prayed for such relief in the premises as under the circumstances of his case would be just and right.

All of which will more fully and at large appear by reference to said original petition and the exhibits annexed thereto.

And your petitioner now represents and shows that such proceedings were had by this court on said original petition, that after issue joined thereon, and the taking of testimony, and the arguments of counsel, this court, on the final hearing of said cause, decided that your petitioner had not shown himself entitled to relief, on the sole ground that said assignment of said contract of lease from the said Daniel Saffarans to your petitioner was technically defective and insufficient to vest in your petitioner a legal title to the rents accrued and accruing thereon, because the said R. H. Crittenden, Isaac Saffarans, and A. P. Sheldon, had never endorsed on it their approval in the manner required by the aforesaid endorsement thereon by the said Daniel Saffarans, which said adverse decision of the court was reported to the Thirty-fifth Congress, at the second session thereof.

And your petitioner further represents that, while said adverse decision was still pending before Congress, at the first session of the Thirty-eighth Congress, a joint resolution was passed by said body, recommitting said cause to this court for further hearing; which resolution was approved July 2d, 1864, and is in the following words, to wit:

5 *Joint resolution for the relief of Alexander Cross.*

Whereas Alexander Cross heretofore filed his petition in the Court of Claims of the United States, praying relief on account of certain rents alleged to be due from the United States to him as assignee of one Daniel Saffarans, by virtue of a certain alleged contract of lease between the said Daniel Saffarans (who is now deceased) and the United States; and,

Whereas the said Court of Claims, on the twenty-fourth of January, eighteen hundred and fifty-nine, rendered a decision adverse to the prayer of said petition, on the sole ground of an alleged technical defect in the assignment of said lease from the said Daniel Saffarans to the said petitioner: Now, therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the said cause be remanded to said Court of Claims for a further hearing, upon the testimony heretofore filed therein, and such further testimony as either party may take and file pursuant to the rules of said court; and if, upon the further hearing of said cause, it shall appear that the said petitioner is the equitable owner of said lease, and in justice and equity entitled to the rents (if any) due thereon from the United States, the said court shall be authorized to render judgment therefor in his favor, notwithstanding any technical defect in the assignment of said lease: *Provided,* That no money shall be paid out of the Treasury upon any judgment which may be rendered in favor of the petitioner in said cause, until he shall have filed with the Secretary of the Treasury a bond, with ample security, in such sum as will fully indemnify the United States against any demand which may be set up and established by or on behalf of the heirs or representatives of the said Daniel Saffarans, deceased, under or by virtue of said contract or lease.

Your petitioner further represents that, before the delivery to him of the aforesaid assignment of the said Daniel Saffarans, he had fully paid the said Saffarans the full consideration therefor, according to the agreement between them in relation thereto; and said consideration was more than said assignment was actually worth, and more than your petitioner would have paid therefor, except as a means of saving himself from very heavy losses on account of the advances which he had made for the said Saffarans as hereinbefore and in his said original petition mentioned; that he paid the said Daniel Saffarans over and above the entire cost of said building, and the ground occupied by it, the full sum of twenty-one thousand dollars, with which the said Saffarans was satisfied, and for which he intended to convey and assign to your petitioner all his right, title, and interest in and to said premises, and in his said contract with the Government in relation to the renting of the same, and in and to all rents which had accrued or might there-

6 after accrue thereon; that your petitioner was put in possession of said premises by the duly-authorized agent and attorney of the said Daniel Saffarans, and has remained in the undisputed possession thereof ever since; that the said Daniel Saffarans in his lifetime never set up any claim or pretense to any ownership of or any interest in the said premises, subsequent to the delivery of the possession thereof to your petitioner as aforesaid, or to the rents accrued or accruing thereon, or any claim or pretense whatever in any way inconsistent with the claim of your petitioner as entire owner of said premises, and of said contract of lease, and all rights accrued or to accrue by virtue thereof; nor have the heirs or representatives of the said Saffarans, or

any person or persons on his or their behalf, or claiming any right, title, or interest by, from, or under him, or them, ever set up any such claim or pretense.

Your petitioner therefore alleges that, if there is any defect in the said assignment from the said Daniel Saffarans to him, by reason of which it has failed to vest in your petitioner a perfect legal title, it is a purely technical defect, which in no wise affects his title in equity and justice; that your petitioner is in equity and justice the entire owner of said premises, and of said contract of lease with the Government, and is in justice and equity entitled to all the rents due thereon from the Government of the United States.

And your petitioner further represents that, after the passage of said joint resolution, to wit, on or about the 10th day of July, 1864, he filed in this court his supplemental petition, praying a rehearing of said cause pursuant to the joint resolution aforesaid, and claiming rent under the contract of lease aforesaid, at the rate of fifteen dollars per month, from the said 14th day of August, 1853, to the 14th day of November, 1856, the time of filing said original petition, amounting to the sum of $58,500, but subject to an offset of $14,892 37, on account of money received by your petitioner for rent of said warehouse, and for storage therein during the said time, reducing the sum so claimed by your petitioner in said supplemental petition to $43,607 63, for rents accruing prior to the filing of his said original petition.

And your petitioner further represents that, on the final hearing of said cause at the last preceding term of this court, a judgment was duly rendered by this honorable court in favor of your petitioner against the United States, for the full amount claimed by him in said supplemental petition, to wit, the said sum of $43,607 63.

And your petitioner further represents that, since the filing of his said original petition, the term of said lease has fully expired, and rent has accrued thereon at the rate of fifteen hundred dollars per month as aforesaid, from the said 14th day of November, 1856, to the 14th day of January, 1861, when the said term expired, amounting to the sum
7 of $75,000, but which said sum is subject to a set-off of $5,515 99, on account of money received by your petitioner for rent of said warehouse, and for storage therein, from the 10th of November, 1856, to the said 14th day of January, 1861; full and true statements of which accounts are herewith exhibited, marked O and P, leaving due to your petitioner, for rents accruing as aforesaid, from said 14th day of August, 1856, to said 14th day of January, 1861, a balance of $69,484 01, exclusive of interest, which sum he now claims.

And your petitioner respectfully refers to the record of said former cause, on said original and supplemental petitions, and to all the testimony and exhibits therein contained, and especially to exhibits presented with said original petition, numbered from 1 to 14, inclusive, and prays that the same may be made a part of this petition; and that upon the hearing of this cause he may have the benefit of all the facts established, and of the rulings of this honorable court, in said prior cause, in so far as they may be applicable to this cause; and that such relief may be granted your petitioner in the premises as may be according to law and equity.

And your petitioner further sets forth and alleges that he has never in any way voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States; and further, that the said Daniel Saffarans, assignor as aforesaid of the original contract under which said claim has arisen, and the only prior owner thereof,

died long before the commencement of the late rebellion against said Government, and during his lifetime always bore true allegiance to the said Government of the United States, and never in any way aided, abetted, or gave encouragement to rebellion against said Government.

ALEXANDER CROSS,
By J. J. COMBS, *his Solicitor.*

DISTRICT OF COLUMBIA, *Washington County, ss:*

Joseph J. Coombs, attorney for the above-named Alexander Cross, makes oath and says that he believes the facts stated in the foregoing petition are true; that no assignment or transfer of the claim set forth in said petition, or any part thereof, or any interest therein has been made, except as in said petition stated; and that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and offsets, as he verily believes.

JOSEPH J. COOMBS.

Sworn to and subscribed this 31st day of May, 1866, before me.

EDM. F. BROWN,
Commissioner of the Court of Claims.

EXHIBIT "O."—STORAGE ACCOUNT. *Statement of goods stored in Alex. Cross' warehouse, No. 1, from 14th November, 1856, to 14th January, 1861, and account of storage charged and collected for same from Cross & Co.'s storage books.*

Goods stored.					Storage charged and collected.						
1856. Nov. 14	In store, account Cross & Co.....	2 bales carpeting.	1	ton..	Viz: From 14 Nov., '56, to 26 May, '57.	2 bales..	1 ton...	7 mo's.	50c..	.....	3 50
1856. Nov. 14	....do .....do.....	4 bales carpeting.	2	tons.	" " 14 Nov., '56, to 14 Jan., '57.	4 bales..	2 tons..	2 mo's.	50c..	2 00	
					" " 14 Jan., '57, to 14 May, '57.	3 bales..	1½ tons..	4 mo's.	50c..	3 00	
					" " 14 May, '57, to 14 June, '57.	2 bales..	1 ton...	1 mo ..	50c..	50	
											5 50
1856. Nov. 14	... do .....do.....	3 bales carpeting.	1	5-10 tons.	" " 14 Nov., '56, to 14 Jan., '57.	3 bales..	½ ton...	2 mo's.	50c..	1 50	
					" " 14 Jan., '57, to 14 Feb., '57.	2 bales..	1 ton...	1 mo ..	50c..	50	
					" " 14 Feb., '57, to 14 Mar., '57.	1 bale...	½ ton...	1 mo ..	50c..	25	
											2 25
1856. Dec. 18	Received, account C. Casperson..	310 boxes candles..	5	tons.	" " 18 Dec., '56, to 18 Jan., '57.	310 box's..	5 tons..	1 mo ..	75c..	3 75	
					" " 18 Jan., '57, to 18 June, '57.	310 box's..	5 tons..	5 mo's.	50c..	12 50	
											16 25
1856. Dec. 19	....do....account Cross & Co.....	8 cases cigars....	3	tons.	" " 19 Dec., '56, to 19 Jan., '57.	8 cases..	3 tons..	1 mo ..	75c..	2 25	
					" " 19 Jan., '57, to 19 June, '57.	5 cases..	2 tons..	5 mo's.	50c..	5 00	
					" " 19 June, '57, to 30 June, '57.	4 cases..	1½ tons..	1 mo ..	50c..	75	
											8 00
	Carried forward	.....	12	5-10 tons	Carried forward.....	.....	.....	.....	.....	.....	$35 50
9							*Tons.*				
	Brought forward	.....	12	5-10 tons	Brought forward.....	.....	.....	.....	.....	.....	35 50
1857. Jan. 7	Received, acc't Ja's Patrick & Co	45 hhds. butter....	28	5-40 "	Viz: From 7 Jan., '57, to 7 April, '57.	45 hhds ..	28 5-40	3 mo's	50c..	42 19	
					" " 7 April, '57, to 7 May, '57.	26 " ..	16 10-40	1 mo ..	" ..	8 12	
					" " 7 May, '57, to 7 June, '57.	10 " ..	6 10-40	1 mo ..	" ..	3 12	
					" " 7 June, '57, to 20 Aug., '57.	6 " ..	3 30-40	2 mo's.	" ..	3 75	
											57 18
1857. Mar. 14	....do.....do.....do	38 hhds. butter ...	33	10-40 "	" " 14 Mar., '57, to 14 April, '57.	38 " ..	33 10-40	1 mo ..	50c..	.....	16 62
1857. Mar. 17	....do.....do.....do....	2 hhds. butter ...	18	tons.	" " 17 Mar., '57, to 2 April, '57.	20 " ..	18	1 mo ..	" ..	.....	9 00
1857. April 6	....do.....do..N. Larco.....	99 bags coffee.....	8	20-40 tons.	" " 6 April, '57, to 2 May, '57.	139 bags ..	8½	1 mo ..	" ..	.....	4 25
1857. May 11	....do.....do..Cross & Co....	75 casks porter ...	43	6-10 tons.	" " 11 May, '57, to 11 June, '57.	218 casks..	.....	1 mo ..	12½c.	27 25	
					" " 11 June, '57, to 11 Sep., '57.	188 " ..	.....	3 mo's.	10c..	56 40	
					" " 11 Sep., '57, to 11 Oct., '57.	157 " ..	.....	1 mo ..	" ..	15 70	
					" " 11 Oct., '57, to 11 Nov., '57.	145 " ..	.....	1 mo ..	" ..	14 50	
					" " 11 Nov., '57, to 11 Jan., '58.	124 " ..	.....	2 mo's.	" ..	24 80	
											138 65
1857. May 11	....do .....do.....do...	81 casks porter ...	8	1-10 tons.	" " 11 May, '57, to 11 June, '57.	81 " ..	.....	1 mo ..	8c..	6 48	
					" " 11 June, '57, to 11 Aug., '57.	73 " ..	.....	2 mo's.	6c..	8 76	
					" " 11 Aug., '57, to 11 Sept., '57.	72 " ..	.....	1 mo ..	" ..	4 32	
					" " 11 Sept., '57, to 11 Oct., '57.	61 " ..	.....	1 mo ..	" ..	3 66	
					" " 11 Oct., '57, to 11 Nov., '57.	56 " ..	.....	1 mo ..	" ..	3 36	
					" " 11 Nov., '57, to 11 Dec., '57.	55 " ..	.....	1 mo ..	" ..	3 30	
					" " 11 Dec., '57, to 11 Jan., '58.	53 " ..	.....	1 mo ..	" ..	3 18	
											33 06
	Carried forward	.....	152	3-40 t's	Carried forward.....	.....	.....	.....	.....	.....	$294 26

Storage account—Continued.

Goods stored.				Storage charged and collected.						
			Tons.			*Tons.*				
10	Brought forward		152 3-40	Brought forward						294 26
1857. July 10	Rec'd acc. Southgate & Mitchell..	49 bales moss ×	30 25-40	Viz: From 10 July, '57, to 10 Nov., '57	49 bales..	30 5-8	4 mo's.	25c..	30 62	
				" " 10 Nov., '57, to 10 Dec., '57.	33 bales..	20 5-8	1 mo ..	25c..	5 63	
				" " 10 Dec., '57, to 14 Dec., '57	8 bales..	5	1 mo ..	25c..	1 25	
										37 50
1857. July 10	....do .....do.....	178 bale' oakum ×	17 32-40	" " 10 July, '57, to 10 Aug., '57	178 bales..	17 4-5	1 mo ..	25c..	4 45	
				" " 10 Aug., '57, to 18 Dec., '57	93 bales..	9 3-10	5 mo's.	25c..	11 62	
										16 07
1857. Dec. 2	....do .....do.....	65 " " ×	6 20-40	" " 2 Dec., '57, to 2 July, '58	65 bales..	6½	7 mo's.	25c..	.....	11 37
1858. Sept. 11	....do .....Cross & Co.....	53 casks porter ...	13 2-10	" " 11 Sep., '58, to 11 Oct., '58	53 casks..	1	1 mo ..	15c..	7 95	
				" " 11 Oct., '58, to 11 May, '59	49 casks..	.....	7 mo's	12½c.	42 87	
										50 82
1858. Oct. 14	....do .....do.....	38 " " ...	3 8-10	" " 14 Oct., '58, to 14 Nov., '58	38 casks..	.....	1 mo ..	7c..	2 66	
				" " 14 Nov., '58, to 14 June, '59	38 casks..	.....	7 mo's.	5c..	13 30	
										15 96
1859. Aug. 8	....do.....Southgate & Mitchell	77 bbls. nuts.....	7 28-40	" " 8 Aug., '59, to 8 Sept., '59	77 bbls...	7 7-10	1 mo ..	50c..	3 85	
				" " 8 Sept., '59, to 8 Oct., '59	77 bbls...	7 7-10	1 mo ..	50c..	3 85	
				" " 8 Oct., '59, to 8 Jan., '60	75 bbls ..	7 5-10	3 mo's	50c..	11 25	
				" " 8 Jan., '60, to 8 June, '60	55 bbls...	5 5-10	5 mo's.	50c..	13 75	
										32 70
	Carried forward	.....	231 28-40	Carried forward.....	.....	.....	.....	.....	.....	$458 68
11			*Tons.*			*Tons.*				
	Brought forward.....	.....	231 28-40	Brought forward.....	.....					458 68
1859. Sep. 20	Received, acc't Ja's Patrick & Co.	3,465 kegs nails ×	173 5-20	Viz: From 20 Sept., '59, to 20 Oct., '59	3,465 k'gs	173 5-20	1 mo ..	25c..	43 32	
				" " 20 Oct., '59, to 20 Nov., '59	3,224 "	161 4-20	1 mo ..	25c..	40 31	
				" " 20 Nov., '59, to 20 Dec., '59	2,656 "	132 16-20	1 mo ..	25c..	33 18	
				" " 20 Dec., '59, to 20 June, '60	2,641 "	132 1-20	6 mo's	25c..	198 08	
				" " 20 June, '60, to 20 July, '60	2,285 "	114 5-20	1 mo ..	25c..	28 56	
				" " 20 July, '60, to 20 Aug., '60	2,220 "	111	1 mo ..	25c..	27 75	
				" " 20 Aug., '60, to 20 Sept., '60	2,079 "	103 19-20	1 mo ..	25c..	25 99	
				" " 20 Sep., '60, to 20 Oct., '60	1,592 "	79 12-20	1 mo ..	25c..	19 90	
				" " 20 Oct., '60, to 20 Nov., '60	1,462 "	73 2-20	1 mo ..	25c..	18 27	
				" " 20 Nov., '60, to 20 Dec., '60	1,269 "	63 9-20	1 mo ..	25c..	15 86	
				" " 20 Dec., '60, to 14 Jan., '61	1,213 "	60 13-20	1 mo ..	25c..	15 16	
										466 41
1860. Mar. 12	....do.....do.....do.....	555 kegs nails ×	27 15-20	" " 12 Mar., '60, to 12 April, '60	555 "	27 15-20	1 mo ..	25c..	6 94	
				" " 12 April, '60, to 12 May, '60.	534 "	26 14-20	1 mo ..	25c..	6 67	
				" " 12 May, '60, to 12 June, '60	451 "	22 11-20	1 mo ..	25c..	5 64	
										19 25
1860. Nov. 20	....do.....do ..... J. S. Jenkins.	4 cases merch'd'ze .	2	" " 20 Nov., '60, to 14 Jan., '61	4 cases	2	2 mo's.	50c..	.....	2 00
	Carried forward	.....	434 28-40	Carried forward.....	.....	.....	.....	.....	.....	$946 34

Storage account—Continued.

Brought forward—total amount of goods stored	434 28-40 tons.

MEMORANDUM.

The labor of receiving and delivering the goods marked × was done by the owners, viz	255 37-40 tons.
On the balance it was done at the expense of the warehouse, viz	178 31-40 tons.
	434 28-40 tons.

Brought forward—gross amount of storage charged and collected		$946 34
LESS—		
Expenses receiving, delivering, and keeping account of 178 31-40 tons, at 50c.	$89 39	
Expenses superintending receipt and delivery and keeping account of 255 37-40 tons, at 25c	63 98	
		153 37
Amount of net storage		$792 97
Less 5 per cent. collecting		39 65
		$753 32

SAN FRANCISCO, 31*st October*, 1866.

CROSS & CO.

13

EXHIBIT "P."—ACCOUNT CURRENT.

DR. *The United States Government in account current with Alex. Cross, through Cross & Co.* CR.

1861. January 14. To rent as per lease of iron warehouse No. 1, on Battery street, from 14th November, 1856, to 14th January, 1861—50 months, at $1,500 per month—average date due 14th December, 1858	$75,000 00	
January 14. To balance of interest, per contra		
	75,000 00	
1861. January 14. To balance brought down due Alex. Cross	$69,484 01	

1861. January 14. By amount of rent received from Messrs. Southgate & Mitchell for ground floor of iron warehouse No. 1, from 10th November, 1856, to 14th January, 1861—50 4-30 months, at $100 per month	$5,013 33		
Less 5 per cent., collecting	250 66		4,762 67
" January 14. By amount of net storage received for goods stored in iron warehouse No. 1, from 14th November, 1856, to 14 January, 1861, as per statement herewith; average date due 14th December, 1858	$792 97		
Less 5 per cent., collecting	39 65		753 32
" January 14. By balance			69,484 01
			$75,000 00

SAN FRANCISCO, 31*st October*, 1864.

CROSS & CO.

14 In the United States Court of Claims. December term, A. D. 1868.

ALEXANDER CROSS
vs.
THE UNITED STATES. } No. 2479.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $69,484 01, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea, the defendants say that a portion of the alleged claim set up in the said petition, to wit, the sum of sixty-three thousand dollars first accrued more than six years before the said petition was filed in or transmitted to the court; wherefore and by virtue of the provisions of an act, entitled "An act to amend an act to establish a court to investigate claims against the United States," approved March 3,1863, the claimant as to so much of his alleged claim as is above stated, is forever barred of his said action.

T. LYLE DICKEY,
Ass't Att'y Gen'l.

15 In the Court of Claims.

ALEXANDER CROSS
vs.
THE UNITED STATES. } 2479.

Alexander Cross, by J. J. Coombs, his attorney, now comes and for replication to the said amended plea by the defendants secondly above pleaded, says he ought not to be barred or precluded from maintaining his action, aforesaid by reason of anything alleged in said plea, because he says that the whole of said claim set up in his said petition first accrued to him the said claimant on and by virtue of the passage of the joint resolution of Congress, approved July 2, 1864, recited in his said petition, and that he filed his said petition in this cause within two years after the passage of said joint resolution. And this he is ready to verify.

J. J. COOMBS,
Att'y for Cl'm't.

16 In the Court of Claims.

ALEXANDER CROSS
vs
THE UNITED STATES. } No. 2479.

The defendants, by their Attorney General, come and demur to the replication of the claimant herein, because they say that the claim set up in the petition did not in law, accrue against the said defendants by vir-

tue of the statute in said replication averred. And this the said defendants are ready to verify

T. LYLE DICKEY,
Ass't Att'y Gen'l.

17 In the Court of Claims.

ALEXANDER CROSS
vs. } 2479.
THE UNITED STATES.

And now, to wit, Febr'y 1st, 1869, Chief Justise Casey delivered the opinion of the court, in this case, as submitted on the 11th January, 1869, sustaining the demurrer as to a part of the claim and ordering a further hearing as to the remainder.

By the court.

A true copy of record.

18 In the Court of Claims.

ALEX'R CROSS
vs. } 2479.
THE UNITED STATES.

And now the claimant, by J. J. Coombs his att'y, comes & moves the court, to vacate the judgment hereinbefore rendered on demurrer, and for leave to withdraw the replication hereinbefore filed to the second plea of the defendants, and to file in lieu thereof the replication herewith presented.

J. J. COOMBS,
Att'y for Cl'm't.

19 In the Court of Claims.

ALEX'R CROSS
vs. } 2479.
THE UNITED STATES.

And now to wit, 17 March, 1869, it is ordered that the judgment on the demurrer to the replication be vacated & set aside; that the claimant have leave to withdraw his said replication, and file an amended replication to the pleas of the United States.

By the court.

20 In the Court of Claims.

ALEXANDER CROSS
vs. } 2479.
THE UNITED STATES.

The said claimant, by J. J. Coombs his attorney, now comes &, for replication to the plea of the said defendants secondly pleaded, says that at the time and several times when the said claim in his petition set forth, and each and every part and parcel thereof first accrued, he, the said claimant, was residing in parts beyond seas, and without the

limits and jurisdiction of the United States, to wit, at Valparaiso, Chili and that he did not at any time, from the time when said claim or any part or parcel thereof first accrued until within less than three years of the day of the filing of his petition in this court, setting forth a statement of his said claim, return to or come within the limits or jurisdiction of the United States. And this he is ready to verify.

J. J. COOMBS,
Att'y for Clm't.

21 United States Court of Claims.

ALEXANDER CROSS
vs.
THE UNITED STATES. } No. 2479.

Plea in bar.

And the said defendants, by their Attorney General, now come and say that the claimant should not have or maintain his action against the defendants, because at the time of the filing of the supplemental petition in the former cause, mentioned therein, the whole of said rent had then already become due and payable, and should have been included and claimed in said supplemental petition, and in default thereof the same is barred by said former recovery; and defendants therefore ask judgment.

T. H. TALBOT,
Assistant Attorney General.

22 (Indorsed:) 2479. Alexander Cross vs. The United States. Plea in bar. Filed December 21, 1869.

23 In the Court of Claims.

ALEX'R CROSS
vs.
THE UNITED STATES. } 2479.

The claimant, by J. J. Coombs, his counsel, comes and demurs to the plea in bar filed by the defendants Dec. 21, 1869.

J. J. COOMBS,
Att'y for Clm't.

24 In the Court of Claims.

ALEXANDER CROSS
vs.
THE UNITED STATES. } 2479.

And now, to wit, 31st of January, A. D. 1870, the court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said claimant take nothing by his suit, and that his petition be dismissed.

By the court.

A true copy of record.

25 In the Court of Claims.

ALEXANDER CROSS
vs.
THE UNITED STATES. } No. 2479.

The claimant in the above-entitled cause prays the allowance of an appeal to the Supreme Court of the United States from the judgment of the court in said cause, and that this court will certify to said Supreme Court the facts found by this court from the evidence, and the rulings and judgment of this court thereon.

J. J. COOMBS,
Solicitor for Claimant.

Filed in clerk's office March 14, 1870.

Ordered that the appeal prayed in the case of Alex'r Cross vs. The United States be allowed.

By the court.
M'CH 14, 1870.

26 In the United States Court of Claims.

ALEXANDER CROSS
vs.
THE UNITED STATES.

The finding of facts and the conclusions of law on said facts on which the court founded its judgment.

This cause coming on to be heard the day of before all of the judges of the Court of Claims, the said court finds as matters of fact—

1. That in the former action between the parties, brought under the joint resolution of July 2ond, 1864, by the supplemental petition of the claimant, filed July, 1864, this court found that the claimant had given the security in said joint resolution specified, and that he was within the meaning of the joint resolution, the equitable owner of said lease, and in justice and equity entitled to the rents then claimed, accruing from the 13th day of August, 1853, to the 14th day of November, 1856, at 1,500 per month, and amounting to the sum of $58,500, less the sum of $14,892 37, credits allowed the United States, leaving the balance due the claimant $43,607 63, for which judgment was rendered,
27 and has been paid.

2. The rents under the said lease for which the present suit is brought, accruing from the 14th November, 1856, up to the 14th January, 1861, at $1,500 per month, amounting to the sum of $75,000, have not been paid by the defendants, but there is due to them a credit specified in the account annexed to the claimant's petition, of $5,515 19, leaving unpaid a balance of $69,515 01.

That, at the time said claim and every part and parcel thereof accrued, the said claimant was beyond seas, and without the limits and jurisdiction of the United States, and did not return or come within the limits or jurisdiction of the United States until within less than three years from the time of filing his said petition.

And the court decides, as a conclusion of law, that the power and authority conferred upon the court by said joint resolution had been exhausted by the former judgment rendered as aforesaid in said suit, and that this suit could not be maintained.

By the court.

(Indorsed:) 2479. Alexander Cross vs. The United States.

28 In the Court of Claims.

ALEXANDER CROSS
vs.
THE UNITED STATES. } No. 2479.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the counsel for claimant for the allowance of an appeal as filed in the clerk's office 14 March, 1870, and of the order of the court, March 14, 1870, allowing the same; of the findings of fact & conclusion of law thereon, upon which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this ninth day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 404. Alexander Cross, appellant, vs. The United States. Court of Claims. Filed 14th December, 1870.

IN THE

Supreme Court of the United States.

No. 192.—December Term, 1871.

Alexander Cross
vs.
The United States.
} Appeal from Court of Claims.

BRIEF FOR CLAIMANT.

The origin and history of this claim are fully set forth in the petition, the principal points of which are as follows:

On the 28th day of April, 1849, one Daniel Saffarans entered into a contract with James Collier, who was then collector of the port of San Francisco, California, to build and finish a large four-story iron and brick warehouse in San Francisco, on a site to be selected by the said collector, of dimensions and description specified in said contract, to be finished and ready for occupancy by the 1st of September, 1850; said store when finished, approved, and accepted by the collector, to be rented by the United States for the term of fifteen years, the rent per annum to be determined and fixed by the collector.

In May, 1849, said contract, with certain reservations and conditions, was approved by W. M. Meredith, the then Secretary of the Treasury, one of which conditions

was that the rate of rent to be fixed by the collector should be subject to the express approval of the Secretary of the Treasury.

Afterwards, said Collier, as collector, as aforesaid, did contract with said Saffarans to rent said warehouse for a term of fifteen years, at a rent of two thousand dollars per month, which contract was sent to Washington for approval by the Secretary of the Treasury, but was not acted upon by Mr. Meredith during his term of office, which expired about that time.

When the building was completed and ready for occupancy, Mr. Corwin, who had succeeded Mr. Meredith as Secretary of the Treasury, disapproved of the contract made by Collier, in respect to the term of the lease and the rate of the rent, and Saffarans consented to a modification, limiting the term to ten years and the rent to $1,500 per month, payable monthly.

Accordingly, on the 11th of November, 1850, he entered into a supplemental contract with T. Butler King, who had succeeded Mr. Collier as collector of the port of San Francisco, on the terms last above stated. This contract was approved by Mr. Corwin, Secretary of the Treasury, with the express condition that the said collector (King) before accepting the building, should examine it and see that it was built in accordance with the contract entered into by Saffarans, of April 28th, 1849.

Said King, as collector, did examine the building and endorsed on the contract his acceptance of it, the rent to take effect as of the date of 14th of January, 1851.

In the meantime, however, the claimant, Cross, had by agreement with Saffarans, advanced capital to build said warehouse, to the amount of about $100,000.

Saffarans proving wholly unable to reimburse these advances, the claimant, to save himself, was driven to the necessity of purchasing the house, ground and lease, for which he had to pay Saffarans a bonus or profit of $20,000 over cost.

The purchase was consummated, and Saffarans, (being then in Tennessee,) executed a writing, under his seal, assigning to the claimant his said articles of agreement with the government of the United States, with all the rights, rents, and interests accrued or to accrue under and in virtue of the same. This assignment was sent to San Francisco, and delivered to the claimant by attorneys duly appointed by Saffarans for that purpose, or their substitutes.

Said assignment being thus completed, the said Daniel Saffarans by his duly appointed attorney, Isaac Saffarans, B., by a note in writing, endorsed on said contract with the government, addressed to the Hon. T. Butler King, collector as aforesaid, requested that all back and future rents arising under the contract, should be paid to the claimant.

Said collector was, immediately after said assignment and written request, duly notified thereof, and in conformity thereto accepted and recognized the claimant as landlord of the government; and from the 13th of January, 1851, to the 14th of August, 1853, the rent of said warehouse was paid to him monthly in pursuance of said contract with the government.

On the 12th day of April, 1853, Mr. Guthrie, then Secretary of the Treasury, without any valid reason or right so to do, issued an order to the then collector of the port of San Francisco, to abandon said warehouse and stop the payment of rent thereon, which order said collector carried into effect on the 4th of August, 1853, against the written protest of the claimant.

On the 15th day of November, 1856, thirty-nine months having then elapsed since the payment of any rent on said lease, the claimant filed his petition in the Court of Claims (as then constituted), setting forth (more at large) the facts above recited, and praying to be paid the rents which had accrued and remained unpaid up to that time.

After hearing of said cause, upon the petition, exhibits and testimony, said Court of Claims reported to Congress that the claimant had not shown himself entitled to any relief, on the sole ground that said assignment of said contract of lease from Daniel Saffarans to the claimant was technically defective and insufficient to vest in the claimant a legal title to the rents accrued and accruing thereon. (For the ground of this alleged technical defect, see record, pp. 2, 3.)

While said adverse report was pending before Congress a joint resolution was passed by that body and approved July 2d, 1864, as follows:

Joint Resolution for the Relief of Alexander Cross.

Whereas Alexander Cross heretofore filed his petition in the Court of Claims of the United States, praying relief on account of certain rents alleged to be due from the United States to him as assignee of one Daniel Saffarans, by virtue of a certain alleged contract of lease between the said Daniel Saffarans (who is now deceased) and the United States; and whereas the said Court of Claims, on the twenty-fourth of January, eighteen hundred and fifty-nine, rendered a decision adverse to the prayer of said petition, on the sole ground of an alleged technical defect in the assignment of said lease from the said Daniel Saffarans to the said petitioner: Now, therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the said cause be remanded to said Court of Claims for a further hearing, upon the testimony heretofore filed therein, and such further testimony as either party may take and file pursuant to the rules of said court; and if, upon the further hearing of said cause, it shall appear that the said petitioner is the equitable owner of said lease, and in justice and equity entitled to the rents (if any) due thereon from the United States, the said court shall be authorized to render judgment therefor in his favor, notwithstanding any technical defect in the assignment of said lease: *Provided, that no money shall be paid out of the treasury upon any judgment which may be rendered in favor of the*

petitioner in said cause, until he shall have filed with the Secretary of the Treasury a bond, with ample security, in such sum as will fully indemnify the United States against any demand which may be set up and established by or on behalf of the heirs or representatives of the said Daniel Saffarans, deceased, under or by virtue of said contract or lease.

In pursuance of said resolution, said cause was again submitted to the Court of Claims (as now organized), and a judgment was rendered in favor of the claimant for the amount of rent due up to the time of filing his original petition, amounting, (after deducting $14,892.37 for rents and storage received by the claimant after the warehouse was thrown back upon his hands,) to $43,-607.63.

Afterwards, the full term of said lease having expired, the claimant commenced this suit for the recovery of the rents which had accrued subsequently to the filing of his original petition.

The United States first pleaded the statute of limitations.—(Record, p. 10.)

The claimant replied to this plea, and his replication was held to be insufficient on demurrer.—(p. 10.)

The claimant then, by leave of the court, replied, "beyond seas."—(pp. 11, 12.)

The defendant then filed an additional plea, setting up as a defence that, "at the time of the filing of the supplemental petition in the former cause [setting up the passage of said joint resolution of July 2d, 1864,] the whole of said rent had already become due and payable, and should have been included and claimed in said supplemental petition, and in default thereof the same is barred by a former recovery."—(p. 12.)

To this petition the claimant demurred, and on these pleadings the case went to a hearing.

The *judgment* of the court below does not show upon what ground, presented in the pleadings, it was based.—(See p. 12.)

In the *findings* of the Court of Claims, however, the sole ground upon which the adverse decision is based, is clearly enough stated.—(pp. 13, 14.)

The court finds all the facts as they are set forth in the petition, viz:

1. That in the former suit the court found "that the claimant had given the security in the said joint resolution specified, and that he was, within the meaning of said joint resolution, the equitable owner of said lease, and in justice and equity entitled to the rents then claimed, from the 13th of August, 1853, to the 14th day of November, 1856, at $1,500 per month, and amounting to the sum of $58,500, less the sum of $14,892,37, credits allowed the United States, leaving a balance due the claimant of $43,607.63, for which judgment was rendered and has been paid."

2. "That rents under said lease, for which the present suit is brought, accruing from the 14th of November, 1856, up to the 14th of January, 1861, at $1,500 per month, amounting to the sum of $75,000, have not been paid by the defendant, but there is due to them a credit, specified in the account annexed to the claimant's petition, of $5,515.19, leaving unpaid a balance of $69,515.01." [Should be $69,484.01.]

3. That no part of said claim was barred by the statute of limitations.

But, finally, the court decided, "as a conclusion of law, that the power and authority conferred upon the court by said joint resolution had been exhausted by the former judgment rendered as aforesaid in said suit, and that this suit could not be maintained."

This question was not made by the pleadings, nor was it alluded to in the argument. If it had been it is fair to presume the case would never have come here.

The grand mistake fallen into by the Court of Claims consists in supposing that some act of Congress was necessary to confer jurisdiction upon that court in *this case.*

The former suit, for rents which had accrued and become due previous to the commencement of the suit, having been once heard and decided by that court, could not be re-heard there without the authority of an act of Congress. But this case, never before having been tried by the Court of Claims, was just as clearly within the jurisdiction of said court, independently of the joint resolution of July 2d, 1864, as any case that ever came before it.

Now, what does said joint resolution do? In the first place it remands said first cause (which had already been passed upon by the Court of Claims) back to said court for a further hearing, upon the testimony theretofore filed therein, and such further testimony as either party should see fit to take and file therein, pursuant to the rules of said court.

2d. It makes a new issue to be tried by said court, viz: whether the claimant was "the equitable owner of said lease, and in justice and equity entitled to the rents (if any) due thereon from the United States?"

3d. It authorizes said court, if it finds that the claimant *is* the equitable owner of said lease, and *is* in justice and equity entitled to the rents due thereon from the United States, to render judgment therefor in his favor, notwithstanding any technical defect in the assignment of said lease.

4th. It requires the claimant to give a bond to the Secretary of the Treasury, "with ample security," in such sum as will fully indemnify the United States *against any demand which may be set up and established by or on behalf of the heirs or representatives of the said Daniel Saffarans, deceased, under or by virtue of said contract or lease.*

And the court found that the claimant "had *given the security in said joint resolution specified.*"—(See 1st finding, p. 13.)

Now, the clause of said joint resolution which authorizes the Court of Claims to render judgment in favor of

the claimant for the rents that may be found due him in "justice and equity," refers no more to rents accruing prior to the filing of his original petition, than to the rents accruing since. Surely, it is only by a hypercritically strict construction that any different effect can be given to it.

The claim for rents accruing before and after the commencement of the first suit stands in all respects precisely upon the same footing. The resolution expressly authorizes the Court of Claims to render judgment in favor of the claimant for *the rents* found due from the United States *on the lease*, "if it shall appear that the said petitioner is the equitable owner of said lease, and in justice and equity entitled" to said rents. It does not authorize said court to render judgment for a *part*, only, of the rents found due on said lease, nor does it waive the alleged technical defect in the assignment as to a *part*, only, of claimant's demand. There is no word in the resolution thus limiting these clauses, and surely there is nothing in the nature of the case to justify any inference that any such limitation was intended. On the contrary, nothing short of the construction which we claim can give the resolution any other effect than a manifestly preposterous and absurd one.

But if there is any room to doubt, from the language of the body of the resolution, whether Congress intended to waive the alleged technical defect in the assignment, as to the whole of the rents found due the claimant in "justice and equity," or only as to a small portion thereof, the *proviso* certainly removes it. For why should Congress require the claimant to indemnify the government by "a bond with ample security" against *any* demand which may be set up and established by the heirs or representatives of the said Daniel Saffarans, deceased, *under or by virtue of said contract or lease*, if it was intended only to authorize him to recover one third of the rents due.

We respectfully submit that the construction given by the Court of Claims to the joint resolution of July 2d, 1864, is utterly preposterous, and one that never would have received the sanction of that enlightened court, had the question been made by the pleadings or at bar, and been argued by counsel.

It can scarcely be necessary to notice defendant's plea of *former* recovery, and the demurrer thereto.

The only former suit that has ever been brought for rents accruing upon said lease, was commenced in November 1856, for rents which had *then* accrued. When the joint resolution passed, the claimant filed a supplemental petition for the sole purpose of setting up and claiming the benefit of said joint resolution. Said supplemental petition in no sense made a new case, and could not, without a violation of the plainest principles of pleading and practice, have been made to embrace any demand not due at the time of filing the original petition.

There is no rule of law better settled than the rule that in a common law action, no judgment can be rendered for any debt not due at the time of the commencement of the suit. So rigidly was this rule enforced in England prior to Lord Mansfield's time, that even interest accruing on a bond during the pendency of the suit could not be included in the suit.

But in Robinson vs. Bland, (2 Burrows, 1087,) the Court of King's Bench abolished this absurd rule as to accruing interest, and Lord Mansfield laid down the rule in these words:

"When a *new* action *may* be *brought*, and a *satisfaction obtained thereupon*, for any duties or demands which have arisen since the commencement of the depending suit, *that* duty or demand shall *not* be included in the judgment upon the former action. As in *covenant* for non-payment of rent, or of an annuity payable at different times, you may bring a *new* action *toties quoties*, as often as the respective sums become due and payable. So in *trespass* and

in *tort;* new actions may be brought as often as new injuries and wrongs are repeated, and therefore damages shall be assessed only up to the time complained of."

It would have been very convenient to have brought in a demand for all the rents accruing after the commencement of the original suit by means of the supplemental petition filed in that case. Of this the counsel filing said supplemental petition was well aware. But he was also aware of the avidity with which the counsel who defend for the government in said Court of Claims seize upon every technical objection to defeat or embarrass a claimant, and had too much discretion to be caught in such a trap.

J. J. COOMBS,
Counsel for Claimant.

On the hearing the following authorities will be cited

Alex. Crosby vs. The U. States 1st Vol. Court of Claims decisions, 1st Series.

Same vs Same, 1 Nott & H. 347.

Same vs Same - 5. Wall 88

Assignment of error-

The appellant assigns for error that the court of claims erred in ruling (Record p. 14) that the ~~pow~~ suit could not be maintained because the power and authority conferred upon the Court by the joint resolution of July 2. 1864 had been exhausted by the former judgment rendered.

Supreme Court of the United States.

No. 196.—December Term, 1871.

ALEXANDER CROSS
vs.
THE UNITED STATES.
} *Appeal from Court of Claims.*

Assignment of Error.

The appellant assigns for error: That the Court of Claims erred in ruling (Record, page 14) that the suit could not be maintained because the power and authority conferred upon thé court by the joint resolution of July 2, 1864, had been exhausted by the former judgment rendered.

J. J. COOMBS,
Counsel for Appellant.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

ALEXANDER CROSS, *Appellant*,
vs.
THE UNITED STATES. } No. 196.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1871.

ALEXANDER CROSS, *Appellant*,
vs.
THE UNITED STATES. } No. 196.

Appeal from the Court of Claims.

BRIEF FOR THE UNITED STATES.

STATEMENT.

In 1856, the petitioner filed a petition in the Court of Claims to recover certain rents alleged to be due to him as assignee of Daniel Saffarans on a lease made by Saffarans to the United States. On the trial, he failed to prove any such transfer of the premises or of the lease to him by Saffarans as would enable him to maintain the suit, and the court so decided, and reported its decision to Congress.

On the 2d of July, 1864, Congress passed a joint resolution, as follows:

"Whereas Alexander Cross heretofore filed his petition in the Court of Claims of the United States, praying relief on account of certain rents alleged to be due from the United States to him as assignee of one Daniel Saffarans, by virtue of a certain alleged contract of lease between the said Daniel Saffarans (who is now deceased) and the United States; and whereas as the

said Court of Claims, on the twenty-fourth of January, eighteen hundred and fifty-nine, rendered a decision adverse to the prayer of said petition, on the sole ground of an alleged technical defect in the assignment of said lease from the said Daniel Saffarans to the said petitioner: Now, therefore,

"*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the said cause be remanded to said Court of Claims for a further hearing, upon the testimony heretofore filed therein, and such further testimony as either party may take and file pursuant to the rules of said court; and if, upon the further hearing of said cause, it shall appear that the said petitioner is the equitable owner of said lease, and in justice and equity entitled to the rents (if any) due thereon from the United States, the said court shall be authorized to render judgment therefor in his favor, notwithstanding any technical defect in the assignment of said lease: *Provided*, That no money shall be paid out of the Treasury upon any judgment which may be rendered in favor of the petitioner in said cause, until he shall have filed with the Secretary of the Treasury a bond, with ample security, in such sum as will fully indemnify the United States against any demand which may be set up and established by or on behalf of the heirs or representatives of the said Daniel Saffarans, deceased, under or by virtue of said contract or lease." (See 13 Stat. at Large, 591.)

Thereupon the petitioner filed a supplemental petition on the 10th of July, 1864, praying a rehearing of the cause pursuant to the joint resolution, and claiming rent under the contract of lease from the 14th of August, 1853, to the 14th of November, 1856, (as in the former petition,) amounting in all to $43,607 63; and

upon that petition the court found that the claimant had given the security specified in the joint resolution, and that he was the equitable owner of said lease within the meaning of that resolution, and in justice and equity entitled to the rent then claimed, and judgment was rendered in his favor for said sum. On the 31st of May, 1866, the petitioner filed a new petition claiming rent from the 14th of November, 1856, to the 14th of January, 1861. But the court decided that the power and authority conferred upon it by the joint resolution had been exhausted by the former judgment, and that this suit could not be maintained.

ARGUMENT.

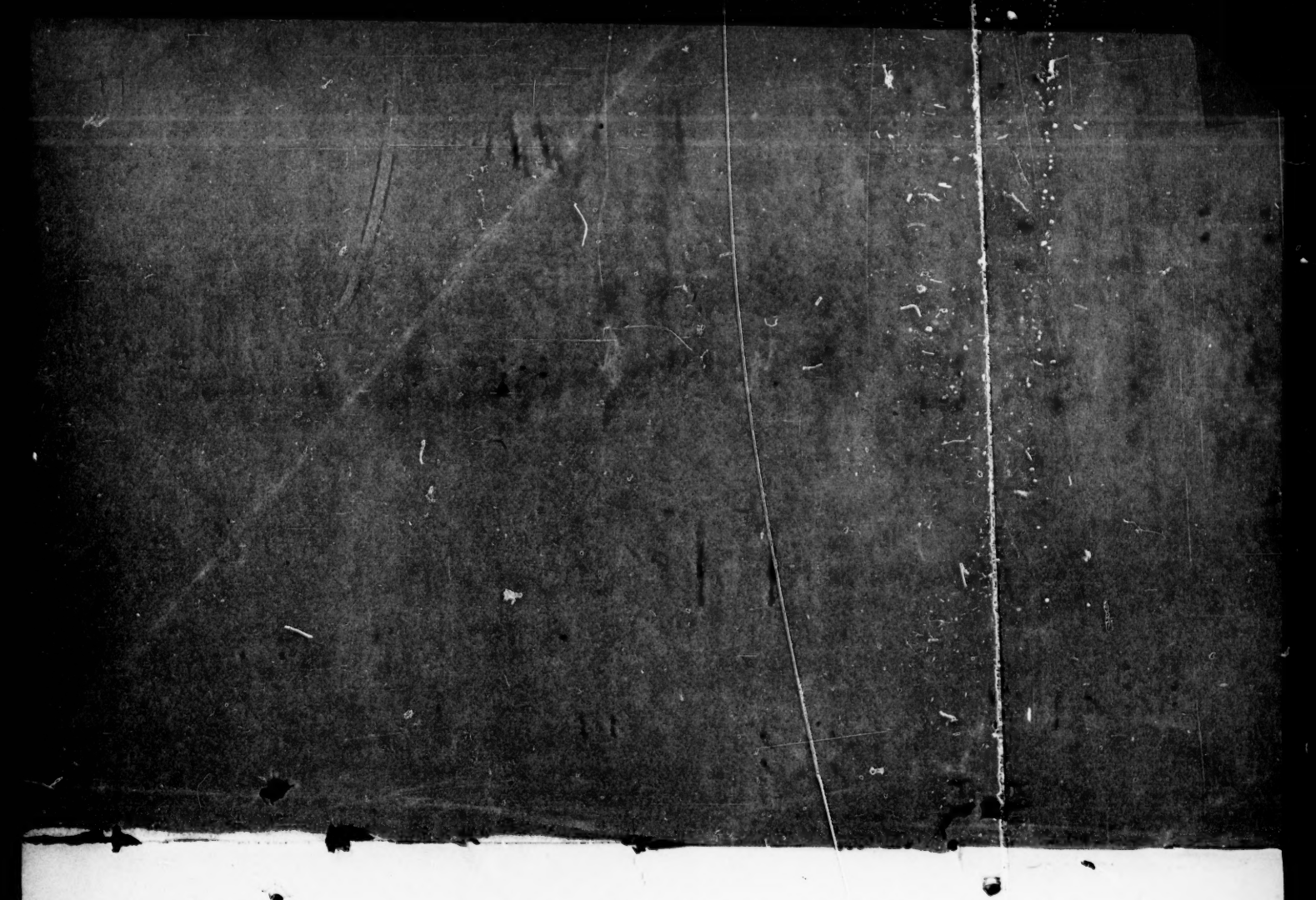
The joint resolution only applied to the case of the first petition of the appellant in the Court of Claims. This is shown by the preamble, "Whereas Alexander Cross *heretofore* filed his *petition* in the Court of Claims of the United States, praying relief on account of certain rents alleged to be due from the United States to him;" and "whereas as the said Court of Claims rendered its decision adverse to the prayer of *said petition;*" and therefore "*Be it resolved*, &c., That the *said cause* be remanded to said Court of Claims for a *further* hearing, upon the testimony heretofore filed therein, and such further testimony as either party may take and file pursuant to the rules of said court."

This language would seem clearly to refer to the cause of action covered by the first petition, and to none other;

and as the Court of Claims could not give relief except so far as it was specially authorized by this act of Congress, its powers must be strictly confined within the language and limits of that act.

But if the resolution is broad enough to cover any claim which the appellant had against the United States under the lease from Saffarans, then the former judgment is a bar to any future recovery by him for the same cause of action. The resolution certainly did not contemplate more than one action, and when the appellant filed his supplemental petition, the rents for which he now sues were due and might have been included by him in that suit. As he did not elect to do so, but brought a suit for a portion only of his claim, he has lost by his laches any right which he might have had under the resolution to recover the amonnt of the rents which he had negligently omitted to include in his petition.

C. H. HILL,
Assistant Attorney General.



Supreme Court United States.

DECEMBER TERM, 1872.

No. 218.

S. P. BROWN, Plaintiff in Error,

vs.

JOHN M. JOLLEY, Cashier, etc., Defendant in Error.

ERROR TO THE SUPREME COURT OF DISTRICT OF COLUMBIA.

BRIEF OF PLAINTIFF IN ERROR.

M'GILL & WITHEROW, PRINTERS AND STEREOTYPERS, WASHINGTON, D. C.

Supreme Court of the United States.

DECEMBER TERM 1872.

S. P. BROWN, Plaintiff in Error,
vs.
JOHN M. JOLLEY, Cashier, etc., Defendant in Error.
No. 218.

ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

STATEMENT OF PLAINTIFF IN ERROR.

This was an action on three promissory notes, by John M. Jolley, cashier of the Richland National Bank, as indorser, against S. P. Brown, as maker.

Two of the notes (declared on in the first and second counts of the plaintiff's narr.) were respectively for $1,898 $\frac{02}{100}$, were payable to A. L. Grimes or order, and were indorsed as follows: "Pay J. M. Jolley, Cash., or order: A. L. Grimes. (See Record, pp. 2, 4.)

Each of the notes had been specially indorsed by J. M. Jolley, cashier, as follows: "Pay W. S. Huntington, Cash., or order, for collection, acct Richland National Bank;" but this indorsement was erased. The third note (described in the third count of the declaration) was for $898 $\frac{01}{100}$, payable to the order of Sarah Jamison; and indorsed by her and A. L. Grimes in blank. (Record, p. 6.)

The evidence on the trial showed that the first two notes had been discounted by the Richland National Bank, of

which Jolley the plaintiff, was cashier, at the request of A. L. Grimes, the payee, and the proceeds passed to his credit in his private account, and that the notes were held and owned by the bank; and it further tended to prove that the third note for $898 $\frac{61}{100}$ had not been discounted by the bank, but was merely held for collection, having been left with the bank for that purpose by A. L. Grimes, and that *this* note was not, and never had been, the property of the bank. (See Record, p. 12.)

Defendant asked the court to instruct the jury that the plaintiff was not entitled to recover upon his evidence, which the court refused to do. (Rec. p. 11.)

The defendant offered certain prayers for instruction to the jury, which were refused by the court, who instructed them that if they believed the whole evidence, they should find for the plaintiff. (Record, p. 13.) The refusal to instruct, as prayed by defendant, and the instruction as given by the court, constitute the subjects of the present exceptions.

The jury, under this instruction of the court, rendered a verdict in favor of the plaintiff for the whole amount of the three notes, with interest, &c., and on this verdict judgment was entered by the court below. (Record, pp. 13, 14.)

STATEMENT OF ERRORS RELIED ON BY PLAINTIFF IN ERROR.

I. The court erred in refusing to instruct the jury that plaintiff could not recover upon the evidence offered by him.

II. The court erred in refusing to instruct the jury, that if they should find from the whole evidence, that, at the time of the institution of this suit, the Richland National Bank was the holder and owner of the notes described in the first and second counts of the declaration, and that A. L. Grimes was the holder and owner of the note described in the third count of the declaration, the plaintiff was not entitled to recover.

III. The court further erred in refusing to instruct the jury, that, if they should find from the whole evidence that

the notes offered in evidence were indorsed to the plaintiff, as the cashier of the Richland National Bank, by the payee of said notes, and that the title was not divested by any subsequent indorsement by said bank, or on account of said bank, to the plaintiff, he was not entitled to recover.

IV. The court erred in instructing the jury, that if they believed the whole evidence offered by the plaintiff and defendant, they should find for the plaintiff.

ARGUMENT.

These assignments of error present two questions:

1st. Whether the plaintiff was entitled to sue and recover, in his own name, upon the two notes described in the first and second counts of the declaration, which had been discounted by the bank of which plaintiff was cashier; or whether or not the suit would alone lie thereon in the name of the bank?

2d. Whether the plaintiff was competent to sue and recover, in his own name, upon the third note, if the evidence showed that this note was held and owned by A. L. Grimes, and had been left with the bank for collection on his account?

We respectfully contend that the bank was alone competent to sue upon the first two notes discounted for Grimes, and that Grimes was alone competent to recover upon the third note. But if the court should be of opinion that the bank might recover upon this third note, we then contend that the suit thereon should have been in the name of the bank, and cannot be prosecuted in the name of Jolley. The general question, therefore, as to the right of action on these notes, will be considered briefly, in connection with the facts as to their respective ownership.

FIRST. *As to the notes described in the first two counts.* The question whether, where a note is indorsed to the cashier, or other agent of a bank, in a transaction which vests the property in the note in the bank, the action thereon should be in the name of the agent or the principal, does

not seem to have been ever, in terms, decided by this court; though the question, in one form or another, has been much considered by the State courts.

The question, however, as to the right of action upon a bill indorsed to a person as Treasurer of the United States, and received on account of the Government, was considered in the case of *Dugan* v. *United States*, (3 Wh., 172,) and the right of the Government to sue on such a bill was affirmed upon grounds which we should deem applicable to the case of a bill payable or indorsed to a private moneyed corporation, and actually made or received on account of the corporation.

The question arose in New York, in the case of *Watervliet Bank* v. *White*, (1 Denio, 608,) where the principle was declared, that the indorsement of a note to the cashier of a moneyed corporation, by adding the word *Cashier* to his name in the indorsement, is a transfer to the corporation, if that was the design of the transaction; and the corporation could sue, without any formal transfer by the cashier. The object of the indorsement was merely to create an agency.

This decision was expressly approved by the court of appeals in *Babcock* v. *Beman*, (1 Kernan, 201,) where it was held, that an officer of a corporation, to whose order, as such, a note executed to it is payable, and who indorses the note, adding to his name his official character, and negotiates it on behalf of the corporation, is not personally responsible as indorser. The effect of such an indorsement is merely to transfer the paper.

In Maine the cases seem to hold generally that, where a promise is made *to* an agent of a private corporation or of the State, the right of action is vested in the principal.

Trustees, etc., *v.* Parks, 10 Maine, 441.
Irish *v.* Webster, 5 Greenleaf, 171.
State *v.* Boies, 11 Maine, 474.
Garland *v.* Reynolds, 20 Maine, 45.

In Alabama, South Carolina, and Florida the same doctrine appears to prevail.

The leading case in Alabama (*Alston* v. *Heartman, Treasurer*, 2 Ala., 700) lays down this rule: that where a note is made payable to the treasurer of a corporation, without naming him, the corporation must sue; but where there is nothing on the face of the paper to show that the corporation was a party to the contract, the action must be in the name of the person who took the legal interest; and that if the contract appears to have been made with the corporation, though the promise is to pay the agent *eo nomine*, the corporation should sue. Collier, C. J., in that case, said: "The reasonable interpretation of the note on its face is, that it is an engagement to pay a sum of money to which the Manual Labor Institute was entitled, and the treasurer, as its proper depositary, was to receive it. In this view no legal right to sue vested in the treasurer; the corporation was the party contracted with, and in its name the action should be brought."

In *Dupont* v. *Mount Pleasant Ferry Co.*, (9 Richardson, 255,) the court say: "Since our case of Ligon *v.* Irvine, (1 Rich., 502,) it is no longer to be questioned, that if the contract be made with the corporation, as shown by the circumstances, the legal right to recover, or the legal duty to respond, is with the principal."

In Florida it is held that a note payable to the agent of a corporation is suable in the name of the company, if proved to be its property.

Southern Life Ins. Co. *v.* Gray, 3 Fla., 262.

In Vermont it is considered settled, that the party beneficially interested in a note may sue in his own name thereon.

Rutland and B. R. R. Co. *v.* Cole, 24 Vt., 38.
Arlington *v.* Hinds, 1 D. Chip., 438.

In Massachusetts, the case of *Sherwood* v. *Roys* (14 Pick., 172,) laid down this sensible rule, that a person holding a note as *trustee* may bring an action on it in his own name; but a person holding it as a mere *depositary and agent* (as in this case) must bring an action on it in the name of the *principal*.

In *Commercial Bank* v. *French* (21 Pick., 486) the court held, that where a note was made payable "to the cashier of the Commercial Bank or order," and the consideration proceeded from the bank, the action was properly brought by the bank as the promisee. "The principle," say the court, "is, that the promise must be understood according to the *intention of the parties*. If, in truth, it be an undertaking to the corporation, whether a right or a wrong name, whether the name of the corporation *or some of its officers* be used, it should be declared on and treated as the promise of the corporation, *And there is no so safe a criterion as the consideration*. If this proceeds from the corporation, it raises a very strong presumption that the promise is made to them. If no express promise be made, but it be left to legal implication, it must be to them."

This adjudication was followed in *Eastern R. R. Co.* v. *Benedict*, (5 Gray., 561,) where it was held that on a written order to deliver property to "J. S., President of the Eastern Railroad Co.," for a consideration moving from the company, the company might sue in their own name. The instrument, the court said, might be properly held to disclose an agency, and to indicate enough to authorize an action in behalf of the railroad, upon actual proof that the bargain was made on their account.

See also *Barney* v. *Newcomb*, (9 Cushing, 53,) where it was held that a bank which discounts a bill payable to the order of "A. B., Cashier," may maintain an action thereon in its own name.

The other class of cases, in which the question of the personal liability of parties making or indorsing negotiable paper with their official style or designation, has been considered, hold very generally that, *prima facie*, such words show the note to be the note of the corporation and not the officer, who can only be made personally liable upon it appearing that he was not authorized.

Mechanics' Bank of Alex. *v.* Bank of Columbia, 5 Wh., 326.

Mann *v.* Chandler, 9 Mass., 336.

Farmers and Mechanics' Bank *v.* Troy City Bank, 1 Douglas, 458.
Baker *v.* Chambles, 4 Greene, 428.
Collins *v.* Johnson, 16 Georgia, 458.
Shaver v. Ocean Mining Co., 21 Cal., 45.

On the whole, we contend that the principle in every case of a suit upon a negotiable instrument is, or should be, that whenever it is to be inferred that the promise is made, not to the agent personally, but through him to the principal, or where the agent holds the instrument not as trustee, but as a mere depositary, there the action should be in the name of the principal, and not of the agent; and such a principle will lead to safe and uniform adjudications.

In the case at bar the indorsements, though in form to the plaintiff, as cashier, were in fact to the bank, who owned the entire beneficial interest in the notes. The notes were its property, and held by the plaintiff, not as trustee, but as the dry depositary of the bank.

And the court should have instructed the jury that the plaintiff could not recover the contents in this suit.

SECOND.—*As to the note described in the third count.* Whatever may be the law in respect to the notes discounted by the bank, it is clear that the plaintiff cannot maintain his action upon this note, which is held and owned by A. L. Grimes, and merely in the hands of the bank for collection on his account.

The decision of Mr. Justice Story in *Thatcher* v. *Winslow*, (5 Mason, 58,) appears to be conclusive on this point. That was the case of a note sued on by a party who held merely as agent of a bank who had discounted the note.

"Unless the plaintiff," said the court, "is a real holder of the note, and has some interest in it, he cannot maintain an action as indorsee against the defendant. I take it not to be competent for a mere agent to maintain an action on a negotiable note in his hands, although it be with the consent of his principal. He must be the owner of the note, or

have some substantial interest therein. If it be admitted or proved *aliunde*, that he is but a mere agent, and holds the note as such, he is not competent to recover a judgment upon it in his own name."

In the case of *Adams Bank* v. *Jones*, (16 Pick., 574,) it was held, that where a bank refuses to discount a note, suit cannot be brought upon it in the name of the bank, even if it consent to allow its name to be used. The court say: "There never was any valid contract between the bank and the makers of the note. The mere signing of the note did not make it a valid contract. The assent of both parties is essential to the validity of a contract."

If it could, therefore, be held that the bank acquired, by the mere delivery of the note to it for collection, such an interest as entitled it to bring suit in its own name, it cannot be held that this agent of the bank may recover the contents, in his own name, against the maker.

Between the plaintiff and this defendant no privity or connection of any sort, in law, appears to exist.

The court below erred, therefore, in permitting a recovery upon this note; and for this error the judgment should be reversed, and a *venire de novo* awarded.

J. Hubley Ashton,
N. Wilson,
Of Counsel for Plaintiff in Error.

Note.—This Brief was in the printers' hands before the return of the certiorari. We have only opportunity to say, that if the indorsement of Grimes on the third note transferred the right of action, the suit must be in the name of the Bank, and to refer to *Gilmore* v. *Pope*, (5 Mass., 491.)

J. H. A.

Supreme Court of the United States.

SAMUEL P. BROWN

vs.

JNO. M. JOLLEY, CASHIER, &c.

No. 218.

BRIEF OF THE DEFENDANT IN ERROR.

This was an action in the Supreme Court of the District of Columbia, on three promissory notes, executed by the plaintiff in error, two of them to A. L. Grimes or order, and the third to the order of Sarah Jamison. The first two notes were endorsed by Grimes to "Jno. M. Jolley, cash., &c.," and were discounted by the Richland National Bank of Ohio, of which Jolley was the cashier. The other note was endorsed by Sarah Jamison to A. L. Grimes, who endorsed it to "Jno. M. Jolley, cash , &c.," or order.

On the trial the notes were put in evidence, and the endorsements were fully proved. It was also proved that the two first-mentioned notes had been discounted by the bank and belonged to it, while the other note had not been discounted, but was held only for collection and belonged to Grimes, who testified that he assigned it to Jolley only for collection.

Besides the general issue, there were some special pleas, but there was no evidence to sustain them.

The plaintiff in error asked the court below to instruct the jury in effect as follows:

1st. If the Bank and Grimes were the holders and owners of the notes, the plaintiff is not entitled to recover.

2d. If the jury find that the notes were endorsed to Jolley, as the cashier of the Richland National Bank, and that the title was not divested by any subsequent endorsement by or on account of said bank, then the plaintiff is not entitled to recover.

The court refused these instructions, but on the contrary, instructed the jury, if they believed the whole evidence offered by the plaintiff and defendant, they should find for the plaintiff.

The sole question in the case is, whether the endorsee of a note, not being the actual owner of the fund, can maintain a suit in his own name. Of this there cannot be a doubt. The principle was settled by this Court in the case of O'Brien *vs.* Smith, 1st Black., 99.

In Byles on Bills, with notes by Sharswood, edition of 1857, p. 575, note 1, the following is laid down and supported by numerous authorities:

"When a note is payable to bearer, or endorsed in blank, the action on it may be maintained by any one lawfully in possession of it. He need not be the owner or have any interest in it, provided he has not obtained it *mala fide*."

In fact, the principle is so plain that it is insisted that the case has been brought to this Court solely for delay, and

without any reasonable expectation of reversing the decision below. The defendant in error asks the court to impose the penalty prescribed in such cases by the rules of this Court.

FRED. P. STANTON,
For Def't in Error.

J. Mall. 224

Supreme Court of the United States.

DECEMBER TERM, 1871.

S. P. BROWN, *Plaintiff in Error.*
vs.
JOHN M. JOLLEY, *Cashier, Defendant in Error.*
} No. 218.

REPLY TO BRIEF OF PLAINTIFF IN ERROR.

Statement of the Case.

This is a writ of error to reverse the judgment of the Supreme Court of the District of Columbia. The original action was founded on three promsisory notes, executed by the plaintiff in error, which, with the endorsements thereon, are in the words and figures following, to wit:

"$1,898 02.

WASHINGTON, June 24, 1869.

Thirty days after date, I promise to pay to the order of A. L. Grimes, eighteen hundred and ninety-eight dollars and two cents, at my office, corner of 15th street and New York avenue. Value received

S. P. BROWN.

No. ——. Due ——————.

[ENDORSED: Pay J. M. Jolley, Cash., or order.—A. L GRIMES.]"

"$1,898 02.

WASHINGTON, June 24, 1869.

Sixty days after date, I promise to pay to the order of A. L. Grimes, eighteen hundred and ninety-eight dollars and two cents, at my office, corner of 15th street and New York avenue. Value received.

S. P. BROWN.

No. 53. Due ——————

[ENDORSED: Pay J. M. Jolley, Cash., or order—A. L. GRIMES.]"

"$898 01.

WASHINGTON, June 24, 1869.

Ninety days after date, I promise to pay to the order of Sarah Jamieson eight hundred and ninety-eight dollars and one cent, at my office, corner 15th street and New York avenue. Value received.

S. P. BROWN.

No. ——. Due ——————.

[ENDORSED: Sarah Jamieson. Pay J. M. Jolley, Cash., or order.—A. L. GRIMES.]"

The first two of these notes were discounted by the "Richland National Bank of Mansfield, Ohio," of which Jolley was the cashier. The other note was endorsed by the payee, Sarah Jamieson, to A. L. Grimes, who endorsed the same to J. M. Jolley, Cashier, or order.

These notes were duly protested.

John M. Jolley testified, "The notes were endorsed to me as cashier; this makes me in person, as cashier, the holder of the notes, the bank owns the equitable interest in the notes, but I am the actual holder of the notes, for the benefit of the bank, the notes having been made payable to me as cashier, and never transferred to the bank by me. The back of the notes show all the transfers made." (See Record, p. 3.)

A. L. Grimes testified, "Two of the notes were made payable originally to me, but were by me negotiated and

endorsed to J. M. Jolley as cashier of the Richland National Bank."

"Q. 10. Who is the holder and owner of these notes in suit?

A. John M. Jolley, as cashier of the Richland National Bank, is the holder and owner of the two notes made by Brown to me." * * And *is the holder* for collection" of the other note, &c. (See Record p. 4.)

Argument.

No question has been made as to the liability of the plaintiff in error on his obligations, upon which the original suit was brought. But the simple question is presented, whether the suit was properly brought in the name of the defendant in error, or in other words, whether the suit should have been brought, and could be maintained *only* in the name of the bank of which the defendant in error was the cashier.

The instruments sued on, came within the denomination of commercial paper, and the right in action passed by endorsement, and by the law merchant vested in the indorsee.

It is worthy of remark here, that the endorsement of the paper to the defendant in error was *special*, to wit: "*Pay to J. M. Jolly, cash., or order.*" The name of the bank is not given in the endorsement, *nor does it appear anywhere on either of the notes.*

The special endorsement on the back of these notes constituted a written contract, which could not be varied or enlarged by parol evidence.

The instructions asked to be given to the jury were properly rejected; 1st. Because they assumed that the terms of the special endorsement on the notes could be varied or enlarged by parol evidence; 2d. Because they were founded on the assumption, that the "Richland

National Bank" was named in the endorsement on the notes; and 3d. Because they were at variance with, and contrary to, the law governing the case.

The brief on behalf of the plaintiff in error, appears to be founded on the erroneous assumption that the endorsement was to the defendant in error, "*as cashier of the Richland National Bank*," whereas the endorsement is to J. M. Jolley personally, and the name of his principal for whom he was acting, was not given or made to appear on the paper at all. The addition of "*cash.*," as an abreviation of cashier, to the name of Jolly, was wholly immaterial, being, as all the authorities show, mere *descriptio personæ*.

It is said in "Parsons on Notes and Bills," (vol. 2. p. 489):

"From the general rule that the party entitled to sue, is the one in whom *the paper itself* shows the legal title to be, it follows that upon a bill or note payable to a person by name, although described therein as an agent of another, who is also named, the action should be brought in the name of the person so described as agent or in that of his endorsee," &c.

And again, the same author, on p. 451, adds:

"Where a bill or note is made payable to A B, described as agent, cashier, treasurer, president, or the like, without naming the principal, the person so described as agent is the one entitled to sue, and evidence *aliunde* will not be admitted to show who the principal is."

This is amply sustained by the authority of the following cases:

Bank of the U. S. *vs.* Lyman, 20 Vt., 666.
Van Ness *vs.* Forrest, 8 Cranch, 30.
Fairfield *vs.* Adams, 16 Pick., 381.
Horah *vs.* Long, 4 Dev. and B., 274..
Rose *vs.* Laffan, 2 Speers, 424.
McHenry *vs.* Ridgeley, 2 Scam., 309.
Law *vs.* Parnell, 7 J. Scott, (N. S.(282.

Also by numerous other cases referred to by this author, in his notes on pages 450 and 451. And on p. 443 he says further:

"An agent who holds a bill or note payable to bearer or indorsed in blank, or *to whom it has been endorsed for the purpose of collection, may sue on it in his own name.*" This is fully sustained by Little *vs.* O'Brien, 9 Mass., R. 483; and Brigham *vs.* Gurney, 1 Mich., R. 346.

When the endorsement to the cashier or agent by name, discloses also the name of the principal, it is said, that the suit may be brought in either the name of the agent or in that of the principal. But on this point the authorities are not entirely uniform.

Where, however, the endorsee named, is the agent or cashier, and the name of the principal is not given, in the written instrument, the decisions are numerous and uniform to the effect that the suit may be maintained in the name of the agent.

The general doctrine, that an agent, contracting *in the name of his principal*, and not in his own name, is not entitled to sue on such contracts, as they can be enforced only in the name of the principal; and on the contrary, that an agent, contracting in his own name, without naming the principal in the contract as a party to it, is entitled to sue on such contract, is very fully explained in Story on Agency. (See sections 391, 392, 393 and 394.)

And in relation to the rights of agents to sue third persons, founded upon contracts made by them, this author in Sec. 393, says, "They are all resolvable into the following classes:

"*First.* Where the contract is made in writing expressly with the agent, and imports to be a contract personally with him, although he may be known to act as an agent.

"*Secondly.* Where the agent is the only known or ostensible principal, and, therefore, is, in contemplation of law, the real contracting party.

"*Thirdly.* Where by the usage of trade, or the general

course of business, the agent is authorized to act as the owner, or as a principal contracting party, although his character as agent is known.

"*Fourthly.* Where the agent has made a contract, in the subject matter of which he has a special interest or property, whether he professed at the time to be acting for himself, or not.

"In all these cases, the agent acquires personal rights, and may maintain an action upon the contract, in his own name, without any distinction, whether his principal is or is not, entitled also to similar rights and remedies on the same contract.

"The first class may be illustrated by the common instance of a promissory note, given to an agent as such, for the benefit of his principal, where the promise is, to pay the money to the agent *eo nomine*, in which case he may sue on the note in his own name.

"So, a promissory note, promising to pay A and B, 'trustees of ,' (naming the corporation,) may be sued by A and B, as proper parties thereto.

"So, a promissory note, made payable, or endorsed to A, 'cashier,' or order, may be sued by him personally, he being the cashier of a bank."

In addition to the cases before cited, this lucid exposition is further sustained by the cases of Johnson *vs.* Catlin, 27 Verm., 89; and Porter *vs.* Nekervis, 4 Rand., (Va.,) 359, which are in point in the case now under discussion.

But the rule here insisted on is not new in this court, and we should, perhaps, apologize for having occupied as much time in presenting it as we have. In the case of O'Brien *vs.* Smith, 1st Black's R., 99, the precise question here made by the plaintiff in error, was decided by this court. In the application of the principle, that case is not distinguishable from the case now before the court. And in that case, Chief Justice Taney said, in reference to the very question now made by the plaintiff in error, "it cannot be necessary to discuss here questions which we consider as too well settled to be now open to serious controversy." The same thing substantially had been previously settled in Van Ness *vs.* Forrest, 8 Cranch, above cited.

This is manifestly a case of an appeal for delay. The suit below was undeniably an ordinary collection case. The plaintiff in error had obtained a loan of money on his own individual promissory notes at a distance. He let his notes at maturity go to protest. Allowed himself to be sued, and appealed to the Supreme Court on a mere technicality. Ingenious counsel can make some kind of a question in any case. The plaintiff has had the use of the money between two and three years by procuring delay in the administration of justice.

A refusal of the penalty in this case would encourage appeals for delay.

T. W. BARTLEY,
Att'y for Def't in Error.